

**The Conservation Easement Granted July 11, 2019 by the George W. Clayton Trust
to the City of Denver**

- I. What Is the Language of the Conservation Easement Covering the Park Hill Golf Course Land?
 - a. The "Conservation Easement" granted July 11, 2019 by the George W. Clayton Trust to the City of Denver and recorded at Reception No. 2019090259 ("the 2019 Conservation Easement") is clearly labeled "Conservation Easement" in the heading. The 2019 Conservation Easement preserves the entire 155 acres of the Park Hill Golf Course land ("PHGC Land") as open space.
 - b. The fourth Whereas Clause of the 2019 Conservation Easement states that that Denver "desires to acquire a conservation easement" and that the conservation easement is granted "pursuant to Title 38, Article 30.5 of the Colorado Revised Statutes", commonly referred to as the Colorado Conservation Easement Statute (the "Act"). The Act provides the statutory rules governing all Colorado "conservation easements in gross." See C.R.S § 38-30.5-101.
 - c. Paragraph 2 (Grant of Easement) of the 2019 Conservation Easement grants to the City "a perpetual, non-exclusive conservation easement in gross."
- II. What Are the "Conservation Purposes" of the 2019 Conservation Easement?
 - a. The City takes the narrow view that the "conservation purposes" of the 2019 Conservation Easement are limited to the operation of a regulation-length 18-hole public golf course. Real estate developer Westside Investment Partners, Inc. ("Westside") shares this view.
 - b. Since the 2019 Conservation Easement was granted pursuant to the Act, the "conservation easement in gross" definition in the Act applies to the Conservation Easement. The provisions of that definition relevant to the 2019 Conservation Easement are:

"Conservation easement in gross"...means a right in the owner of the easement to prohibit or require a limitation upon...a land...area...owned by the grantor appropriate to the retaining or maintaining of such land...predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for...recreational... or other use or condition consistent with the protection of open land, environmental quality or life- sustaining ecological diversity.... C.R.S. § 38-30.5-102 [emphasis added].

- c. Consistent with the Act, the overarching "conservation purposes" of the 2019 Conservation Easement are "for the conservation of the Golf Course Land as open space"(Paragraph 1) and "to maintain the Golf Course Land's scenic and open condition and to preserve the Golf Course Land for recreational use." (Paragraph 2).
- d. The language in the 2019 Conservation Easement regarding use of the PHGC Land for a "regulation-length 18-hole daily fee public golf course" with related uses and activities and for "unrelated recreational uses such as ball fields, tennis courts, etc." identifies permitted uses of the land consistent and compatible with the "conservation purposes" of the deed of conservation easement.

III. What Are Westside's Options if it Decides not to Continue Operating a Golf Course on the PHGC Land?

- a. If Westside wants to add another public open space recreational use for the PHGC Land and amend or remove references to golf course use in the 2019 Conservation Easement, it and the City could agree to modify the 2019 Conservation Easement regarding permitted uses so long as the new use is consistent with the "conservation purposes" of the 2019 Conservation Easement. In no event would such changes permit residential or commercial development on the land.
- b. Westside could sell the PHGC Land to the City for the City to designate as a regional park. The sale price in such a transaction would be based upon the appraised current fair market value of the land as restricted by the 2019 Conservation Easement.